

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15712 of Terry Lee Hume, pursuant to 11 DCMR 3107.2, for a variance from the maximum allowable percentage of lot occupancy requirements (Subsection 403.2) for an addition to a flat in an R-4 District at premises 215 Morgan Street, N.W. (Square 555, Lot 95).

HEARING DATES: September 30, 1992 and January 13, 1993
DECISION DATE: February 3, 1993

ORDER

SUMMARY OF EVIDENCE:

1. The property which is the subject of this application is located on the north side of Morgan Street between New Jersey Avenue and Kirby Street N.W. It is known as premises 215 Morgan Street, N.W. and it is zoned R-4.

2. The site consists of a rectangular lot measuring 2,000 square feet in land area with a width of 20 feet and a depth of 100 feet. The subject site is developed with a two-story plus basement rowhouse which includes two porches at the rear, one on each story of the structure. The porches are in disrepair and need to be replaced.

3. The applicant testifying that she currently occupies both units of the flat. She stated that she would like to increase the living space of one of her units so that she can rent the other unit.

4. The applicant proposes to increase the size of the porches to make the small porches usable. Currently, the porches extend six feet from the houses. She proposes to extend each porch an additional four feet to the rear.

5. The R-4 District requires a minimum lot area of 1,800 square feet and a minimum lot width of 18 feet. A 60 percent lot occupancy is allowed. The applicant's lot measures 2,000 square feet exceeding the minimum requirement by 200 square feet. The lot is 20 feet wide, two feet wider than what is required. With regard to lot occupancy, 1,200 feet is allowed. However, with the extended porches, the applicant's property would occupy 1,280 square feet of the lot. Therefore, the applicant is seeking a variance from the allowable lot occupancy in the amount of four percent or 80 square feet. She stated that the actual additional square footage is 60 square feet, not 80 square feet as the Zoning Administrator's calculations indicate.

6. The applicant testified that her lot is very narrow and the house is deep. The house has an antiquated design because it is nearly 100 years old. She further stated that the house is very dark because little direct light is able to enter. The applicant maintains that these are exceptional conditions related to her property.

The applicant testified that because of the dilapidated condition of her porches, they have to be rebuilt rather than repaired. She stated that the Building Code requires the erection of brick fire walls between her property and adjoining properties. She feels that to reconstruct the porches the same size as they are now would not be feasible financially. Therefore, she would like to increase the size to make the renovation worthwhile by providing her with additional usable space and a place to enjoy access to direct sunlight. The applicant maintains that the Building Code requirements create a practical difficulty for her because she cannot simply tear down the porches. There must be a rear exit from the upstairs flat.

7. The applicant testified that the porches are designed with the ends cut at an angle so that they will not cast shadows or cut off light and air from neighbors. She stated that the geographic location of her house prevents casting of shadows because the house faces north/south and the sun rises in the east and settles in the west. Therefore, the applicant maintains that the use of neighboring properties will not be adversely affected.

8. By memorandum dated September 22, 1992, and through testimony at the hearing, the Office of Planning (OP) recommended denial of the application. OP noted the physical characteristics of the property and the proposed use. OP noted that the new porches would be ten feet wide whereas the old porches are six feet wide.

OP stated that the character of the area in which the site is located is primarily residential and is developed with rowhouses interspersed with apartments and churches. The rowhouses are two and three stories in height.

OP pointed out that the subject property currently conforms to the zoning requirements for the R-4 District.

OP was of the opinion that a practical difficulty due to the size and shape of the property does not exist in this case. The existing porch can be renovated or replaced without the need for a variance if its width remains at six feet.

Further, the enlarged porches would impair the intent and purpose of the zone plan for the city by increasing the lot

occupancy at the subject site beyond the maximum allowed in an R-4 District. Therefore, OP recommends denial of the application.

9. By memorandum dated August 12, 1992, the D.C. Fire Department stated that it has evaluated the request for zoning relief to determine its effect on emergency operations. The Fire Department stated that based on this review, it has no objection to the application.

10. By report dated September 25, 1992, Advisory Neighborhood Commission (ANC) 5C commented on the application. The ANC stated that at its meeting, questions were raised as to how the applicant's neighbors felt about her proposal. To address these questions, the ANC recommended that the applicant circulate a petition among the residents of her block in an effort to advise them of her intentions and, where possible, to obtain community support for the project. Additionally, in direct response to a concern raised by one of the applicant's next door neighbors, the ANC asked the applicant to commit to having a licensed contractor who is bonded and insured to perform the work in question.

The ANC stated that on September 25, 1992, the applicant submitted a petition containing 36 signatures of residents in support of the application. The ANC was of the view that the petition demonstrated substantial community support and was an indication that neighbors do not perceive an adverse impact associated with the relief requested.

11. One letter in support of the application was received from the applicant's adjoining neighbor who resides at 213 Morgan Street. However, no one appeared at the hearing to testify in support of the application.

12. Three neighbors testifying at the public hearing characterized themselves as opponents to the application. However, only two of these witnesses addressed issues related to the zoning regulations.

The opposing neighbor who resides at 209 Morgan Street stated that she was testifying on behalf of the applicant's next door neighbor who resides at 217 Morgan Street. The witness expressed a concern that the applicant's improvements would increase the value of her house, thereby leading to an increase in property taxes for area residents, who, in most cases, cannot afford to pay.

The witness also testified that construction at the applicant's house might cause damage to nearby homes because the structures are very old. She was concerned that nearby homeowners cannot afford to pay for repairs to their homes if they are damaged because of the applicant's work.

13. Responding to these concerns the applicant stated that she would have the work done by a licensed, bonded and insured contractor.

14. The opposing neighbor who resides at 217 Morgan Street testified on her own behalf to express her concern about the proposal. This witness stated that longer porches will make the applicant's property look odd or different from the nearby properties. She stated that her porch and the applicant's porch are the only open ones. The others are enclosed; however, they have not been extended beyond their original distance from the house. The witness stated that the porch should be remodeled, but not extended.

With regard to the issue of uniqueness, this witness stated that all of the lots and houses appear to be the same in terms of narrowness and size.

Finally, the opposing neighbor was concerned that the larger porches would block light and air from nearby properties.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds the following:

1. The lots and houses near the applicants property are similar in size, shape and narrowness.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing evidence of record, the Board concludes that the applicant is seeking a variance from the maximum allowable lot occupancy provisions for R-4 Districts. Granting such a variance requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional, narrowness, shallowness, shape or topographical conditions. The Board further must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has not met this burden of proof. The Board concludes that the applicant has failed to demonstrate that her property is different in size, shape or topography from other neighboring properties. The testimony of record indicates quite the contrary, i.e., that the nearby lots are all long and narrow and the houses are old and inaccessible to the sun toward the rear. Therefore, no extraordinary condition exists solely for the applicant's property.

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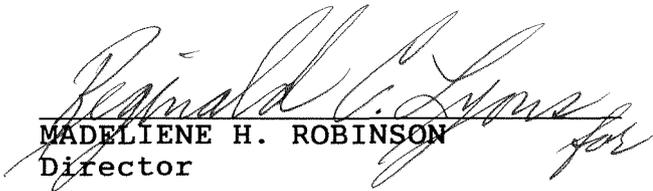
Because the Board has determined that the first test for variance relief has not been met, it is unnecessary to address the remaining tests related to adverse impact and consistency with the zone plan.

In light of the foregoing, the Board ORDERS that application is hereby DENIED.

VOTE: 4-0 (Maybelle Taylor Bennett, Sheri M. Pruitt, Angel F. Clarens and Paula L. Jewell to deny; Carrie L. Thornhill not present, not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: JUL 14 1994

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ord15712/TWR/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



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As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUL 14 1994 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

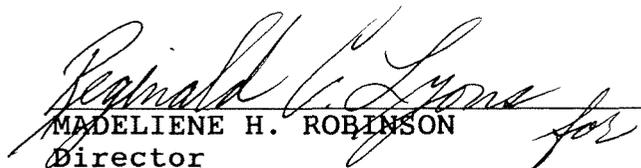
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MADELIENE H. ROBINSON
Director

DATE: JUL 14 1994 .